Neutral Citation Number: [2012] EWHC 2908 (Admin)

Case No: CO/3900/2011

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 October 2012

Before :

MISS BELINDA BUCKNALL QC
Sitting as a Deputy High Court Judge

- -

Between :

FELIX CASH	**Appellant**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**Respondents**
(2) WOKINGHAM DISTRICT COUNCIL	

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- -

Michael Rudd (instructed by **Messrs R.J. Hawksley & Co**) for the **Appellant**
Christiaan Zwart (instructed by **Treasury Solicitors**) for the **First Respondent**
Edmund Robb (instructed by **Prospect Law Ltd**) for the **Second Respondent**

Hearing dates: 10 July 2012

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Approved Judgment

Miss Belinda Bucknall QC :

The Facts

1. Pine Ridge, Nine Mile Ride, is an area of land at Crowthorne, Berkshire within the area of local government administered by the Second Respondent, Wokingham Borough Council ("Wokingham BC"). The Claimant, Mr. Felix Cash, is the owner of the land ("the site"). The site is within an area of woodland protected as to the whole by a tree preservation order. He also owns adjoining land. Prior to June 2009, he started to develop the site by creating 22 areas of hard standing and installing services and utilities. The development of the site involved clearing it of preserved trees and the associated wild life habitat.

2. On 26 June 2009 Wokingham BC served an enforcement notice ("the first enforcement notice") alleging that Mr. Cash was in breach of planning control by installing services and utilities and creating 22 areas of hard standing on the site. The notice required Mr. Cash to remove the 22 areas of hard standing, the services and utilities and all debris and to restore the land to its condition prior to the development, within a period of 3 months. By virtue of section 174 of the Town and Country Planning Act 1990 ("the Act"), Mr. Cash had a right of appeal to the Secretary of State for Communities and Local Government ("the Secretary of State") against the enforcement notice. He was also entitled to make a retrospective application for planning permission for the development.

3. By an application dated 7 December 2009 Mr. Cash applied for planning permission to change the use of the land for the stationing of 22 mobile homes for residential purposes and the formation of additional hard standing. By a notice dated 3 February 2010 the application was refused. By section 78 of the Act Mr. Cash had a right of appeal against that refusal to the Secretary of State.

4. Mr. Cash did not comply with the first enforcement order and the areas of hard standing and the services and utilities remained in situ. On a date which is not in evidence, he placed 22 mobile homes on the individual areas of hard standing, connected them to the services and utilities and began to let some of them, mainly to individuals but not in every case, pursuant to 6 month leases. He also erected a close-boarded fence around part of the perimeter of the compound within which the development was located.

5. On 11 February 2010 Wokingham BC served an enforcement notice ("the second enforcement notice") alleging that Mr. Cash was in breach of planning control by changing the use of the land to use for stationing mobile homes for human habitation and by erecting the fence. As at that date 20 of the mobile homes were let. The notice required Mr. Cash to cease using the land to station mobile homes for human habitation, to remove all mobile homes, to remove the fence and to remove all debris, within 6 months. Again Mr. Cash had a right of appeal to the Secretary of State.

6. Mr. Cash exercised his rights of appeal to the Secretary of State against the two enforcement notices and the refusal to grant planning permission. The Secretary of State appointed an inspector to hear all three appeals via a local public inquiry.

7. On 6 July 2010 the inspector opened the inquiry and then adjourned it, due, I was told, to the ill health of Mr. Cash's counsel. The adjourned hearing took place between 27 September and 1 October 2010. The inspector heard evidence of fact from a number of people. Among those from whom he heard evidence were Mr. Cash and 9 of the residents. Thereafter, between the end of the inquiry and 12 November 2010, with the inspector's leave and as set out in his decision letter under the heading "Matters considered following the close of the inquiry" further documents and written representations were submitted to him on two issues.

8. By a decision letter dated 1 April 2011 containing detailed reasons the inspector dismissed the two appeals against the enforcement notices and the appeal against the refusal of planning permission but varied the terms of the enforcement notices, in particular by extending time for compliance from 6 months to 18 months.

The applications before the Court

9. Mr. Cash applies pursuant to section 288 of the Act for an order quashing the Secretary of State's dismissal of his appeal against the refusal of Wokingham Borough Council to grant his planning application. He needs no leave for that application. He also applies pursuant to section 289 of the Act for permission to appeal the Secretary of State's dismissal of his appeal against the two enforcement notices and, if leave is granted and the appeals (or either of them) succeed, for an order that the decision of the inspector be quashed.

10. On 22 September 2011 Lord Carlile of Berriew ordered that the applications for leave and, if granted, the substantive section 289 appeals, and the section 288 appeal should all be determined at a single oral hearing.

The principles of law

11. Counsel for Mr. Cash referred me to the case of *Seddon Properties Ltd. v. Secretary of State for the Environment and another* [1978] J.P.L. 835 for the principles by which the Court must be guided when reviewing a decision of the Secretary of State. They are well known and do not need to be recited in this judgment. I was also referred to the case of *R. on the application of Newsmith Stainless Ltd. v. Secretary of State for Environment, Transport and the Regions* [2001] EWCH Admin 74, in which Sullivan J reiterated the point made in other authorities, that a section 288 application is not an opportunity for review of the merits of an inspector's decision and that the court must be astute to ensure that such challenges are not used as a cloak for what is in truth a rerun of the planning merits. He went on to emphasise that the threshold of Wednesbury unreasonableness is a difficult one for an appellant to surmount where the fact-finding body is an expert tribunal. These comments apply with equal force to appeals pursuant to section 289. I bear the guidance in both cases in mind in the present case.

12. The grounds for Mr. Cash's applications for leave/review are in summary that the inspector's decision was not within the powers conferred by the Act, that he failed to understand the issues before him and/or misdirected himself in his approach to those issues, that he took into account matters that were not relevant and that he failed to take into account matters that were relevant. In relation to each of the challenged

decisions it is alleged that he took a flawed approach with the result that his decision was Wednesbury unreasonable.

13. An allegation that the inspector so conducted himself during the hearing of the inquiry as to give rise to a perception of bias was abandoned at the hearing before me. It was, however, in part because that allegation remained live until the start of the hearing that, unusually in such proceedings, Wokingham BC appeared at the hearing to assist me with its first hand knowledge of the inspector's conduct of the hearing, the Secretary of State having no such knowledge.

14. The specific matters about which the Claimant complains that the inspector's approach was flawed are as follows:-

> Ground A –his approach to the service of the second enforcement notice;
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> Ground B – his approach to the assessment of harm resulting from flood risk;
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> Ground C –his approach to the assessment of harm resulting from ecological matters;
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> Ground D – his approach to the Claimant's proposal that temporary planning permission for a limited period be granted;
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> Ground E – his approach to the assessment of the need for housing;
>
> Ground F – his approach to the removal of the fence.

The applications for leave

15. It is convenient to take Grounds A and F first and in each case to determine the application for leave. In considering whether to grant leave the test is whether the Applicant has shown an arguable case. See *Kensington and Chelsea Royal London Borough Council v. Secretary for State for the Environment* [1992] 2 PLR 116.

Ground A – the inspector's approach to the service of the second enforcement notice on the residents of the mobile homes

16. It was contended on behalf of Mr. Cash that in relation to the second enforcement notice, leave to appeal should be granted and the appeal allowed because (1) the inspector erred in finding that the service of that notice on the residents of the mobile homes complied with the relevant statutory provisions and (2) his alternative conclusion, namely that if he was wrong about the service nevertheless no substantial prejudice had been caused, was flawed.

17. As to the first point, section 172(2) of the Act requires an enforcement notice to be served on the owner and the occupier of the land to which the notice relates. The residents of the mobile home park were clearly occupiers, who were thus required to be served with the notice.

18. Section 329 provides for the way in which service of notices and documents required or authorised to be served may be effected, in the following terms,

> "(1) Any notice or other document required or authorised to be served or given under this Act may be served ...either-
>
> by delivering it to the person on whom it is to be served ...: or
>
> by leaving it at the usual or last known place of abode of that person ..or
>
> by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode ...;

This sub-section is of general application to notices and documents whether they are required, or merely authorised, to be served. Wokingham BC could have effected service on the occupiers pursuant to one or other of the methods specified in this sub section but the sub section is permissive and it was not obliged to do so.

19. Sub-section (2) provides as follows,

> "(2) Where the notice... is required ...to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice ... is required ... to be served on any person as an occupier of premises, the notice ...shall be taken to be duly served if –
>
> It is addressed to him either by name or by the description of "the owner" or, as the case may be "the occupier" of the premises (describing them) and is delivered or sent in the manner specified in subsections 1(a), (b) or (c); or
>
> It is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and –
>
> ...
>
> It is delivered to some person on those premises ..."

Sub-section (2) thus deals with two classes of person, those who have an interest in premises and those who are occupiers of the premises. The first class may well not have a presence at the premises; the second will do. That is why in the case of someone who has an interest in premises but is not an occupier, Parliament has provided that the method of establishing due service pursuant to one or other of sub-sections 2(a) and (b) requires as a condition precedent that there must first be a reasonable inquiry to try and ascertain his or her name.

20. A failure to effect service properly does not automatically require an appeal to be allowed. That is because section 176(5) of the Act provides,

> "Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him."

21. The undisputed facts are that Wokingham BC's enforcement officer served the notice on Mr. Cash as the owner of the property, together with a number of copies of the notice which he understood would be passed on by Mr. Cash to the occupiers of the mobile homes. Mr. Cash, however, apparently did not share that understanding because he did not pass them on.

22. At the inquiry Wokingham BC contended that the delivery of the copies to Mr. Cash met the requirements of section 329(2)(b)(ii). In the alternative it contended that if service on the occupiers had not been effected properly the Secretary of State was nevertheless entitled pursuant to section 176(5) to disregard that failure.

23. The inspector summarised each party's contentions in paragraphs 8-12 of his decision. In relation to the provisions of section 329(2) he stated that for his part it seemed to him that the service which did take place was in line with section 329(2)(b)(ii) but that if he was wrong then he was satisfied that no substantial prejudice had been caused.

24. As to whether he was correct in his conclusion that service was effected on the occupiers in accordance with section 329(2)(b)(ii), they were, as already mentioned, occupiers of premises who were required to be served with the notice. Service, therefore, could be effected on them pursuant to the procedure in the second alternative in the body of section 329(2). As to whether Wokingham BC correctly followed that procedure, I do not consider that it did. The requirement in section 329(2)(b) that the notice had to be "*so addressed"* refers back to the address requirements of sub-section (2)(a) with the result that the notice had to be addressed to the mobile home occupiers either by name or by the description of "*the occupier".*

25. It was contended on behalf of the Secretary of State that the reference to "Each and Every Occupier /Tennant" [sic] in the list of persons to be served, which was attached to the back of the notice, sufficiently discharged this obligation. I do not agree. A document is only addressed to the occupier if it states on its face that the occupier is the addressee; a person to whom such a notice is handed cannot be expected to search the pages attached to the notice to see if they contain a clue as to the intended recipient. In all other respects the notice complied with the relevant provisions. On the facts the non-compliance was of little consequence because Mr. Cash cannot have been in any doubt about the identity of the persons for whom the copies were intended. Nevertheless the service did not strictly comply with the legislation and the inspector erred in finding that it did.

26. This conclusion makes it unnecessary to consider in detail the alternative case for Mr. Cash. In brief, this was that since the enforcement notice affected the rights of the

occupiers to shelter with at least a modicum of security, Wokingham BC should have effected service using one of the methods specified in sub-section (1)(a)-(c), having first carried out a reasonable inquiry to ascertain the occupiers' names if the sub-section (1)(c) method was used. It was said that the decision in *R. v. Kerrier (1996) 71 P. & C.R. 566* supported the contention. That case, however, was concerned with the general and unexceptional proposition that the personal circumstances of occupiers of premises had to be taken into account by those concerned with the enforcement of planning policy; it was not concerned with the methods expressly permitted by Parliament by which an enforcement notice would be taken to be duly served.

27. As to the challenge to the inspector's conclusion that he was entitled to disregard the failure to serve the notice on the occupiers because no person had been substantially prejudiced, Mr. Cash did not suggest that he had suffered any prejudice by reason of the ineffective service on the occupiers of the mobile homes. The only prejudice he relied upon was prejudice to the occupiers. His case was that an occupier who had not been served might have suffered substantial prejudice because he would, ex hypothesis, not know of his rights. Against that speculative submission there was ample evidence before the inspector from which he could legitimately and reasonably draw the conclusion that no substantial prejudice had been suffered by the occupiers. That evidence included, inter alia, the facts acknowledged by Mr. Cash during his oral evidence before the inspector that (a) everyone on the site was aware that enforcement notices had been issued and (b) everyone who had wanted to come to the inquiry had done so on the day it was opened. It also included the fact that the inquiry had been advertised as required by law and encompassed not only the planning appeal but also the appeal against the enforcement notices. It also included the fact that 9 occupiers attended the hearing, that 5 of them were witnesses for Mr. Cash and that the remainder were recognised as interested parties by the inspector and permitted to make representations, and the further fact that no occupier had come forward at any stage to complain either directly or via Mr. Cash that he or she had suffered prejudice by reason of the failure to serve the second enforcement notice effectively. In my judgment the submission that the inspector's approach to this issue was flawed and Wednesbury unreasonable is unarguable. Accordingly, leave is refused.

Ground F – the inspector's approach to the requirement in the second enforcement notice that the perimeter fence be removed

28. Mr. Cash contended before the inspector that the 1.8m fence was permitted development within the scope of the Town and Country Planning (General Permitted Development) Order 1995, Part 2 Class A and not part and parcel of the development of the site as a mobile home park for which planning permission was required; as such, Wokingham BC was wrong to serve an enforcement notice requiring its removal. In the alternative he contended that if it was part of the unauthorised development, nevertheless it made no sense for it to be taken down because if the mobile home park development was removed, he would be entitled to re-erect the fence in the same place immediately afterwards as permitted development.

29. As to the first alternative, in paragraph 21 of his decision letter the inspector recited Mr. Cash's contention that the fence was permitted development. In paragraph 22 he rejected that contention, in the following terms.

> "There seems little doubt that the fence was erected as part of the development as a whole, and not as a separate operation benefiting from permitted development rights. There was no alternative reason given for its presence on the site, it encloses the compound within which the development has taken place and connection boxes for services linked to the mobile homes have been mounted on the fence. To all intents and purposes, it appears to be an integral part of the development and it is a very noticeable feature of the development as a whole."

30. It was contended on behalf of Mr. Cash that the inspector failed, when deciding whether the fence was part of the mobile home park development or permitted development, to take into account the fact that the fence encloses a larger area than the mobile home park development. Paragraph 22, however, expressly records the fact that the fence encloses "*the compound within which"* the development had taken place. The inspector thus was fully alert to the fact that the development and the compound were not coterminous. Furthermore, the relationship between the fence and the development is patent from plan 2 attached to the second enforcement notice and it is clear from the decision letter (see for instance paragraph 28) and confirmed at the hearing before me by counsel for Wokingham BC, that the inspector had carried out a site visit for the purposes of the public inquiry and was thus drawing on his personal knowledge when determining the status of the fence. In short, the inspector clearly did not overlook this point.

31. As to the second alternative, the inspector considered and rejected the argument that it would be unnecessarily wasteful for the fence to be removed, if thereafter it was re-erected under permitted development rights. He gave reasons for doing so, namely that that no case had been put forward on behalf of Mr. Cash to indicate a "clear likelihood" that the fence would be re-erected if removed. He thus properly had regard to the fact that Mr. Cash had failed to adduce persuasive evidence that he would re-erect the fence as permitted development.

32. For the above reasons, I am satisfied that Ground F is unarguable. Accordingly I refuse leave.

Ground B - the assessment of harm resulting from flood risk

33. It was common ground at the hearing that the site of the appeal development had, as to one area, been built up above the predicted 1:100 flood level, resulting in loss of flood plain storage. Mr. Cash presented an alternative location that was acceptable to the Environment Agency as a compensation area. Wokingham BC, however, objected on the grounds that to make it available as a compensation area would require earthworks that would destroy many trees and natural habitat, adding to the destruction already caused by the mobile home park development. As recorded in the inspector's decision letter, Mr. Cash's expert was not available to deal with this issue during the inquiry and so the inspector gave leave for Mr. Cash to respond in writing to Wokingham BC's ecological concerns after the conclusion of the inquiry.

34. The written assessment of Mr. Cash's own expert, received in evidence pursuant to that leave, was that the compensation area originally proposed would, if used, result in the loss of some 50 trees subject to a Tree Preservation Order, together with the

associated habitat. Presumably recognising that his expert's opinion was not likely to allay Wokingham BC's ecological concerns, or commend the development to the inspector, Mr. Cash also sought to adduce evidence of other compensation areas as alternatives to the one originally proposed. Those had not been addressed in his Flood Risk Assessment, they had not been considered by the Environment Agency or Wokingham BC and as recorded by the inspector in his decision letter, were outwith the arrangements for post-hearing evidence and written submissions.

35. It was contended on behalf of Mr. Cash that (1) because the flood risk could in theory be mitigated the inspector should have concluded that little or no harm could be attached to that harm (2) the inspector inappropriately and wrongly attributed weight to the risk of flooding when the only identified harm was that attributed to ecological harm (3) the inspector wrongly failed to allow Mr. Cash's ecological expert to give evidence during the inquiry as to alternative compensation areas but made arrangements for such evidence to be adduced after the close of the inquiry and then refused, unfairly and in breach of the rules of natural justice, to take it into consideration (4) the inspector took into account that the appeal development gave rise to harm from an increased risk of flooding and therefore carried out a flawed balancing act.

36. Dealing first with the third point, these are serious charges and as such they need to be established by cogent evidence. At the hearing before me counsel for Mr. Cash stated that the arrangements were not such as to exclude evidence of alternative compensation areas and counsel for Wokingham BC advised that the arrangements were as set out in the inspector's decision letter. No cogent evidence was adduced which established that the version of events for which Mr. Cash contended was correct. In consequence, he has failed to prove the relevant facts. Furthermore, the inherent improbability that the inspector would have granted open-ended leave to Mr. Cash to introduce, after the conclusion of the inquiry, proposals for different flood compensation areas from the area originally proposed, satisfies me that he did not do so. In sum, I accept the submission on behalf of Wokingham BC that the arrangements were as set out in the inspector's decision letter.

37. The resolution of this issue effectively disposes of the remaining points. Since Mr. Cash had no leave to adduce evidence of other areas which might serve as compensation for loss of flood plain storage, and since the other parties would have been prejudiced if it had been admitted, the inspector refused to take it into account. That decision was fair and reasonable. In the result the inspector had only the original compensation proposal to consider and he rejected it on the ground that it was excessively harmful, explaining his reasons. In reaching that conclusion he applied his expert planning judgment. In the result he was entitled to decide that the loss, without an acceptable compensatory scheme, of flood plain storage meant that the development did not avoid increasing the risk of flooding and was thus contrary to Core Strategy Policy CP1(9).

38. In sum, this ground fails.

GROUND C - The assessment of harm resulting from ecological matters

39. The inspector set out the ecology of the site which had been identified in 2004 as a UK Biodiversity Action Plan Priority Habitat containing grass snakes and slow

worms which are priority species, with evidence of badger activity. He also noted the damage to that habitat which had already occurred by reason of the mobile home park development and that Mr. Cash accepted that it was now a question of mitigation. In relation to Mr. Cash's proposal to replace broad leaf woodland, make provision for badger habitat and sets and additional habitat for birds and reptiles by hedgerow enhancement within his wider land ownership, the inspector accepted Wokingham BC's submission that Mr. Cash's proposal was full of uncertainty about the availability and/or suitability of alternative land and whether mitigation measures could be put in place as required by Core Strategy Policy CP7(i). He also linked the ecological considerations to the fact that if planning permission was given for the development, an area would have to be made available to compensate for loss of flood plain storage and the only area in evidence was the one rejected by him as excessively harmful. These were all matters for his planning judgment.

40. The complaint made of the above approach is that the inspector failed to take into account the evidence for Mr. Cash, produced after the hearing of the inquiry, of other areas which it was claimed could be used to compensate for loss of flood plain storage and which would, it was claimed, have limited ecological impact. I have already determined that the decision of the inspector to exclude this evidence was fair and reasonable. Complaint was also made that the inspector "double counted" the loss of flood plain storage and the ecological considerations. Insofar as this complaint was intended to support the submission that the inspector's decision was flawed I reject it. The two considerations were interlinked and he was entitled to take into account the impact which each had on the other. In sum, this ground also fails.

GROUND D - The consideration of the Claimant's proposal that the development be given temporary planning permission limited as to time to four years

41. This ground arises out of the inspector's rejection of Mr. Cash's proposal that, if his appeal against the refusal to grant him full planning permission failed, the development should instead be granted temporary planning permission for a period of four years, pursuant to Circular 11/95. As set out in paragraph 68 of the inspector's decision letter a temporary planning permission will normally only be appropriate either where the applicant proposes temporary development or when a trial run is needed to assess the effect of the development on the area. He went on to say that the development in question could hardly be described as a temporary type of development nor one for which a trial run was needed. He also gave consideration to whether the need of the occupiers for accommodation was such that all other considerations should be set aside for a limited period and concluded that it was not. He tempered the impact of that conclusion by extending time for compliance with both enforcement notices from 6 months to 18 months to give time for the occupants to make alternative arrangements.

42. It was contended on behalf of Mr. Cash first that the inspector had misunderstood Circular 11/95 as requiring the development *to be temporary* whereas what it required was *a proposal* that it be temporary, a distinction which it was claimed was fundamental, and secondly in relation to the alternative requirement, that he failed to carry out an appropriate balancing act to see whether a trial run was needed.

43. As to the first point, the inspector set out the requirement correctly in his decision letter and thus was under no mistake as to its terms. Contrary to the submission on

behalf of Mr. Cash, the requirement is not met merely by the making of a proposal; the inspector must exercise his judgment as to whether the development proposed for temporary planning permission is in fact capable of being treated as temporary. A concrete tower block for instance would not fall within the scope of the Circular merely because the developer proposed that it be temporary. The fact that a development involves caravans or mobile homes does not dictate one way or the other how that judgment falls to be exercised; it depends on the facts of each individual appeal development. Here the homes, although mobile in the sense that they could be moved by a suitable heavy vehicle, were placed on concrete pads, were connected to mains power and supplied with water and were inhabited by people who were paying market rents pursuant to 6 month leases. In addition, the development was bordered by the substantial close-boarded fence already referred to, the land had been cleared of trees and wildlife habitat to accommodate the mobile homes and the whole, in the opinion of the inspector, had the appearance of a suburban housing scheme. His decision that the development did not have the necessary characteristic to be granted temporary planning permission was a matter for his planning judgment and is not open to review by the court.

44. As to the second point, he was entitled to regard the development as one that did not need a trial run, having regard to the facts and matters referred to elsewhere in his decision letter, including inter alia, the facts and matters referred to in the preceding paragraph, the fact that it did not avoid the risk of flooding and the ecological damage already caused; its characteristics and impact were already known.

45. Neither of the contentions, therefore, persuade me that the inspector's decision was flawed and this ground fails.

GROUND E- assessment of need

46. On behalf of Mr. Cash it is contended that (1) the inspector's conclusion that the mobile homes constituted low cost housing was wrong because there was no evidence to support it and on the evidence that was before him he wrongly failed to conclude that the mobile homes constituted intermediate affordable housing (2) the inspector was wrong to reject Mr. Cash's proposal of a planning condition pursuant which occupation of the mobile homes would be limited to persons from Wokingham BC's housing waiting list.

47. As to the first point, in paragraph 25 of the decision letter the inspector identified the need for low cost housing as one of the main issues. In paragraph 44 he set out Mr. Cash's contention that the appeal development provided needed low cost accommodation. In paragraph 45 he recorded Wokingham B.C.'s acknowledgement that there was an overwhelming need for social rented housing. He also noted that according to Wokingham B.C. the average affordable rent in Wokingham was estimated to be about £300 per month and that the £500 monthly rent of the mobile homes was equivalent to the market rent for this type of accommodation, with the result that the appeal development was not providing accommodation at sub market rent levels. In paragraph 46 he rejected Mr. Cash's contention that the appeal development provided intermediate affordable housing. He did so on the ground that the unit rent charged by Mr. Cash did not appear to be below the market rent for mobile home accommodation. Since it is not contended that Mr. Cash adduced affirmative evidence that £500 per month was below the market rent, the inspector

was, in my judgment, entitled to rely upon and accept the view of Wokingham B.C., which must be taken to have considerable expertise as to rent levels in its area, that £500 per month was the market rent. That disposes of the first point.

48. As to the second point, in paragraph 49 of his decision letter the inspector accepted that a planning agreement in accordance with Core Strategy Policy CP5, rather than a condition, was required if 9 of the mobile homes were to be secured as affordable housing and that Mr. Cash had made no proposals for such. Notwithstanding that conclusion he went on to consider the merits of a condition. In relation to that he was not satisfied that a condition would be viable in light of Mr. Cash's acknowledgement that if 9 units were let at affordable housing rent levels the rental returns on the development as a whole would have to be rebalanced, making the viability of any such condition doubtful. These are classic planning decisions and in my judgment the charge that the inspector's approach to the issue was flawed is unsustainable.

49. Save for the question of whether service was properly effected which has no impact on the overall result, the Claimant's applications all fail and are dismissed.

50. Since the contention that the inspector was biased was pursued right up to the hearing and addressed in the skeleton submissions of all three parties before being abandoned as an independent ground and since it continued to have life in relation to the complaint that he gave leave for evidence and then wrongly excluded it, I think it right to end this judgment by recording my impression of the decision letter as a whole, namely that the inspector dealt with the issues throughout in a fair and even handed manner.